



Decision Memo Meisner Special Use Permit

USDA Forest Service
Ochoco National Forest
Lookout Mountain Ranger District
Crook County, Oregon
T.17 S., R. 20 E., Section 22

Background

The special use permit for Kyle E. Meisner to collect and transport water from a spring in the Drake Creek subwatershed to private land for domestic water use has expired. The expired permit authorized Mr. Meisner to maintain and use a domestic water transmission line in an underground ditch. The spring headworks consists of a 24-inch by 24-inch piece of aluminum culvert with holes drilled in the lower portion. The headworks are protected by an enclosure fence. In addition to the headworks, there is a pipe (aka transmission line) that transports water to the residence from the headworks. The pipe is buried and it crosses approximately 609 meters (1,998 feet) of Forest Service administered land.

Decision

I have decided to issue a new special use permit to Mr. Meisner to replace the permit that has expired. The new permit will authorize Mr. Meisner to occupy and use National Forest System lands to collect and transport water for domestic use. The facilities authorized will include an enclosure fence, spring box, and water transmission line in the Drake Creek subwatershed. The permittee can be expected to perform routine maintenance and repairs on the headworks, enclosure fence, and transmission line. This may involve excavation of the line, the headworks, replacing fence posts, and/or repair of the enclosure fence. My decision does not authorize moving the transmission line, digging a new stilling well, or disturbing new ground outside the 1-foot wide strip of land authorized for occupancy.

The Forest Service does not attest that the water from this spring meets state drinking water standards.

This action is categorically excluded from documentation in an environmental impact statement or an environmental assessment because it falls within a category of actions described in FSH 1909.15, Chapter 30, Section 31.2(15) and would not have any individually or cumulatively significant environmental effects. Category 15 describes issuing a special use permit to replace an existing or expired special use authorization when the only changes are administrative, there are no changes to the authorized facilities or increases in the scope or intensity of authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.

The categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects which may significantly affect the environment.

Extraordinary Circumstances

Several resource conditions were considered in determining whether extraordinary circumstances related to the proposed action warrant further analysis. The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion. It is the degree of the potential effect on these resource conditions that determines whether extraordinary circumstances exist. Resource conditions that were considered include:

a. Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species.

Biological evaluations were completed for threatened, endangered, and sensitive botanical, wildlife, and aquatic species. There is one federally listed as threatened wildlife species known to occur on the Ochoco National Forest: northern bald eagle (*Haliaeetus leucocephalus*). This project is not likely to adversely affect bald eagles because the water system facilities are more than 1/4 mile from the nearest known nest and only foraging use in the project area is likely to occur. There are two federally listed as threatened aquatic species known or suspected to occur on the Ochoco National Forest. These species are steelhead trout (*Oncorhynchus mykiss*) and bull trout (*Salvelinus confluentus*). This project will have no effect on either steelhead trout or bull trout because there is no habitat within the project area. There are no federally listed botanical species known or suspected to occur on the Ochoco National Forest.

There are eight wildlife species on the Regional Forester's sensitive species list that are known or suspected to occur on the Ochoco National Forest. They are: Peregrine falcon (*Falco peregrinus anatum*), bufflehead (*Bucephala albeola*), upland sandpiper (*Bartramia longicauda*), western sage grouse (*Centrocercus urophasianus*), gray flycatcher (*Empidonax wrightii*), tricolored blackbird (*Agelaius tricolor*), pygmy rabbit (*Brachylagus idahoensis*), and California wolverine (*Gulo gulo*). There would be no impact to bufflehead, western sage grouse, gray flycatcher, or pygmy rabbit because there is no habitat for these species within the project area. The project would have no impact on peregrine falcon because the small scale and short duration of the project would have negligible effect on the level of human activity in areas where birds may forage. The project may impact individuals or habitat for upland sandpiper, but is not expected to alter their use of the area. The project may impact individuals or habitat for tricolored blackbirds but is not expected to alter their use of the area. The project is not expected to impact California wolverine because the project would not occur within proximity of potential denning habitat.

There are five aquatic species on the Regional Forester's sensitive species list that are known or suspected to occur on the Ochoco National Forest. They are: Malheur mottled sculpin (*Cottus bairdi* spp.), mid-Columbia River spring chinook salmon (*Oncorhynchus tshawytscha*), west slope cutthroat trout (*Oncorhynchus clarki clarki*), redband trout (*Oncorhynchus mykiss* ssp.), and Columbia spotted frog (*Rana luteiventris*). The Columbia spotted frog is also a candidate for listing under the Endangered Species Act. There would be no effect to Malheur mottled sculpin, mid-Columbia River springs chinook salmon, west slope cutthroat trout, or redband trout because there is no habitat for these species within the project area. The project may impact

individuals or habitat for Columbia spotted frog. There is suitable habitat for this species at springs and in Ream Pond; maintenance activities at these locations could impact frogs if frogs are present during these activities. To reduce potential effects to Columbia spotted frog, the permittee will need to contact the Forest Service prior to using ground-based equipment (such as a backhoe or bobcat) off the existing road.

There are 28 botanical species on the Regional Forester's sensitive species list that are known or suspected to occur on the Ochoco National Forest. Eleven of these species are known or suspected to occur in the project area. They are: ascending moonwort (*Botrychium ascendens*), crenulate moonwort (*Botrychium crenulatum*), Mingan's moonwort (*Botrychium minganense*), mountain moonwort (*Botrychium montanum*), twin-spike moonwort (*Botrychium paradoxum*), pinnate moonwort (*Botrychium pinnatum*), Peck's lily (*Calochortus longebarbatus* var. *peckii*), Back's sedge (*Carex backii*), interior sedge (*Carex interior*), silverskin lichen (*Dermatocarpon luridum*), and margined streamside moss (*Scouleria marginata*). Because maintenance activities will occur in and adjacent to ephemeral spring habitat, this project may impact individuals or habitat for all eleven species. However, most habitat will be avoided because vehicle access will be restricted to existing roads or trails designated for vehicle travel.

b. Flood plains, wetlands, or municipal watersheds.

The spring box is in a wetland and the waterline crosses wetlands. The facilities are already in place and no additional effects to wetlands should result from reissuing the special use permit. The project would not affect any flood plain or municipal watershed.

c. Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas.

This project would have no effect on congressionally designated areas because there are no wilderness, wilderness study areas, or national recreation areas in or near the project area.

d. Inventoried roadless areas.

This project would have no effect on inventoried roadless areas because there are none in or near the project area.

e. Research natural areas.

This project would have no effect on research natural areas. There are no existing or proposed research natural areas in the project area.

f. American Indians and Alaska Native religious or cultural sites, archaeological sites, or historic properties or areas.

Surveys were conducted for Native American religious or cultural sites, archaeological sites, and historic properties or areas that may be affected by this decision. The project would avoid all known cultural/heritage sites. Based on known cultural sites, this project has no effect on heritage sites and the qualities that make them eligible to the National Register of Historic Places.

If a cultural/heritage resource site were newly discovered during maintenance activities, efforts will be made to avoid any further disturbance. Site-specific mitigation will be determined if sites could not be avoided, and consultation with the Oregon State Historic Preservation Office (SHPO) will occur prior to resuming activities.

Public Involvement

This proposal was listed in the Schedule of Proposed Actions since April 2005. The proposal was provided to the public and other agencies for comment on November 8, 2005. One letter and one telephone call were received in response to scoping efforts. These responses did not reveal any concerns with this project.

Findings Required by Other Laws

This decision is consistent with the Ochoco National Forest Land and Resource Management Plan as required by the National Forest Management Act. The project was designed in conformance with Forest Plan standards and guidelines.

To prevent the spread of noxious weeds, the Forest Plan (October 2005 amendment) requires that all heavy equipment (such as backhoes) that are authorized to operate outside of road prisms must be cleaned prior to entering National Forest System lands. There are known locations of noxious weeds located in the exclosure and along Forest Service Road 16 between Elkhorn Campground and the exclosure. If the permittee uses ground-based equipment off the existing road, they will need to clean their equipment before using it in the project area. If equipment is cleaned of all soil and plant parts, the project is expected to result in low risk for weed introduction or spread. Ground-based equipment should not be used outside the road prism when weeds are in seed.

The Forest Plan indicates that active bird of prey (i.e. raptors) nests will be protected from human disturbance until nesting and fledging are completed. Goshawks have been observed in the area and activities may disturb nesting and/or fledglings. No nests were observed during field review in 2005. If ground-based equipment is proposed for use outside the road prism between March 1 and August 31, the area should be reviewed for goshawk activity prior to use.

Implementation Date

This project may be implemented immediately.

Administrative Review or Appeal Opportunities

This decision is not subject to administrative appeal.

Contact Person

For additional information concerning this decision or the Forest Service appeal process, contact Diana Hsieh at the Ochoco National Forest, 3160 NE Third Street, Prineville, Oregon 97754 or via telephone at (541) 416-6500.

/s/ Arthur J. Currier

ARTHUR J. CURRIER

District Ranger

8/29/06

Date

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